

OFFICE OF THE ATTORNEY GENERAL



CHARLES A. GRADDICK
ATTORNEY GENERAL
STATE OF ALABAMA

AUG 19 1985

JAMES R. SOLOMON, JR.
DEPUTY ATTORNEY GENERAL

H. WARD McMILLAN, JR.
EXECUTIVE ASSISTANT
TO THE ATTORNEY GENERAL

WALTER S. TURNER
CHIEF ASSISTANT ATTORNEY GENERAL

JANIE NOBLES
EXECUTIVE ASSISTANT

ADMINISTRATIVE BUILDING
64 NORTH UNION STREET
MONTGOMERY, ALABAMA 36130
AREA (205) 834-5150

Hon. Freddie V. Smith, Commissioner
State of Alabama
Department of Corrections
101 South Union Street
Montgomery, Alabama 36130

Department of Corrections -
Prisons and Prisoners

Transfer of death row inmates
for medical reasons discussed.

Dear Commissioner Smith:

This office has received your request for an opinion from the Attorney General in which you ask the following three questions:

1. What legal restraints, if any, prohibit the Department of Corrections from transporting death row inmates to a mental facility pursuant to a commitment order?
2. Is a court order necessary to transport death row inmates to Kilby for inpatient medical health care?
3. Is a court order necessary to transport a death row inmate to a free-world physician's office for an extensive medical evaluation, allegedly crucial to a pending legal action?

In answer to your first question, an order from the committing court is sufficient to authorize the removal of a death row inmate to a secure mental facility for treatment, provided that the provisions for admission to the secure mental facility are met. Code of Alabama 1975, § 22-54-1 et seq. The Department is charged with the care and custody

Hon. Freddie V. Smith
Page Two

of prison inmates including death row inmates and with the responsibility of providing for inmate health needs. Code of Alabama 1975, § 14-1-8(a)(1,6). It has the authority and duty to follow court orders concerning the health needs of inmates in its custody.

In answer to your second question, no court order is necessary for the transfer of a death row inmate from death row to the Kilby Hospital for inpatient medical or mental health treatment, including psychological treatment, since the inmate remains in the Department's custody.

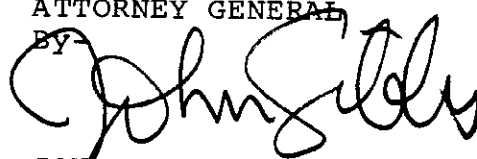
In answer to your third question, a court order is necessary before an inmate may be removed from death row and sent to a free-world physician or hospital for an examination in connection with pending litigation. Such an examination is not conducted pursuant to the Department's legal obligation to care for inmates but rather is conducted to aid or assist the litigation of matters in a particular action. An order from the court in which the action is pending will also ensure that the request is genuine.

I hope that the above fully answers your questions. If this office can be of any further assistance, please let us know.

Sincerely,

CHARLES A. GRADDICK
ATTORNEY GENERAL

By-

A handwritten signature in black ink, appearing to read "John Gibbs", written over the typed name and title.

JOHN GIBBS
ASSISTANT ATTORNEY GENERAL

CAG:JG:fm